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VIA E-MAIL AND FEDERAL EXPRESS

March 25, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Fl. 2
Boston, Massachusetts 02110

Re: D.T.E. 04-33: Verizon Consolidated Arbitration

Dear Ms. Cottrell:

Pursuant to the procedural schedule noted in the Memorandum to the CLEC General Distribution List in this proceeding,[1] Sprint Communications Company L.P. ("Sprint) respectfully files the original and eight (8) copies of these Comments on Motions to Dismiss with the Department.

As noted in the Memorandum, three Motions to Dismiss were filed in this proceeding: Competitive Carrier Coalition's Motion to Dismiss and Response (Coalition Motion"),[2]

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[1] D.T.E. 04-33, Memorandum dated March 18, 2004 from Tina W. Chin, Hearing Officer, to CLEC General Distribution List ("Memorandum"), at 2.

[2] Motion to Dismiss and Response of Allegiance Telecom of Massachusetts, Inc., ACN Communications Services, Inc., Adelphia Business Solutions Operations, Inc. d/b/a Telcove, CoreComm Massachusetts, Inc., CTC Communications Corp., DSLnet Communications, LLC, Focal Communications Corporation of Massachusetts, ICG Telecom Group, Inc., Level 3 Communications, LLC, Lightship Telecom, LLC,

Response and Motion to Dismiss of Sprint ("Sprint Motion"), and Motion to Dismiss and Response of Z-Tel Communications Inc. ("Z-Tel Motion"). The Department should dismiss Verizon's consolidated arbitration petition, at least as to these parties. To the extent that other parties choose to proceed, it is their right and prerogative to do so either in a separate arbitration or in this proceeding if the Motions are not granted. Given the lack of prior negotiation, the absence of a proper statement of the issues and parties' positions in Verizon's petition, and the uncertainty created by *USTA II*,[3] it would be more efficient and a better use of Sprint's and the Department's resources to dismiss the Petition (at least as to Sprint and the other moving parties). For the same reasons that the North Carolina Utilities Commission and the Maryland Public Service Commission suspended and rejected, respectively, Verizon's similar petitions filed in those states, the Department should likewise dismiss Verizon's arbitration petition.[4]

In addition, yesterday the Virginia State Corporation's staff asked for dismissal of a similar Petition submitted by Verizon Virginia, Inc., and Verizon South, Inc., claiming the case is based on faulty logic and that Verizon didn't follow proper rules when filing it.[5] Staff noted that [f]ailure to file supporting documentation is cause for denial of the relief sought in the Petition . . ."[6]

The three Motions to Dismiss include many similar arguments, and Sprint supports the dismissal remedy sought in all Motions to Dismiss filed in this proceeding. Sprint offers the following specific comments in response the Coalition and Z-Tel Motions.

LightWave Communications, Inc., PAETEC Communications, Inc., RCN-BecoCom, LLC, and RCN Telecom Services of Massachusetts, Inc.

[3] *United States Telecom Ass'n v. FCC*, Nos. 00-1012, 00-1015, 03-1310 *et al.*, (*hereinafter "USTA II"*).

[4] A copy of the North Carolina decision was attached to Sprint's Motion. A copy of the letter dated March 15, 2004 from Felicia L. Greer, Maryland PSC Executive Secretary, to David A. Hill, is attached as Attachment 1 to these comments.

[5] Commonwealth of Virginia State Corporation Commission, Case No. PUC-2004-00030, Staff Motion to Dismiss dated March 24, 2004 is attached (without the Certificate of Service and lengthy Service List) as Attachment 2 to these comments.

[6] *Id.* at 4.

Sprint's, the Coalition's and Z-Tel's Motions raise similar procedural points regarding Verizon's failure to comply with the filing requirements mandated by Section 252(b)(2) of the Act. In addition to being woefully procedurally deficient, Verizon's Petition places the parties and the Department at a disadvantage because we don't know what the issues or parties' positions are due to a lack of prior negotiation. Arbitrations usually follow prior negotiations, a narrowing of the issues, and parties' understanding each other's positions. These elements are absent from this arbitration.

Sprint concurs with the Coalition's Motion that consideration of Verizon's Petition at this time would waste administrative resources. Sprint shares Z-Tel's concerns regarding the lack of negotiation between the parties. Sprint also concurs with Z-Tel that the specific provisions of existing interconnection agreements should govern implementation of the new TRO rules.

For the forgoing reasons and those noted in Sprint's Motion to Dismiss, the Department should dismiss Verizon's arbitration petition, at least as to Sprint.

Respectfully submitted,

Craig D. Dingwall

Craig D. Dingwall

cc: Tina W. Chin, Hearing Officer
D.T.E. 04-33 CLEC General Distribution List

BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY OF
THE COMMONWEALTH OF MASSACHUSETTS

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	Docket No. 04-33

ATTACHMENT 1

STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

March 15, 2004

David A. Hill, Esquire
Vice President & General Counsel
1 East Pratt Street, 8E/MS06
Baltimore, Maryland 21202

Re: ***Verizon Maryland Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Maryland Pursuant to Section 252 of the Communications Act, as Amended, and the Triennial Review Order***

Dear Mr. Hill:

On February 20, 2004, Verizon Maryland Inc. ("Verizon") filed the above-referenced Petition requesting that the Commission initiate a consolidated arbitration proceeding to amend the interconnection agreements between Verizon and each of the Competitive Local Exchange Carrier ("CLECs") and applicable Commercial Mobile Radio Service ("CMRS") providers in Maryland, in light of the Federal Communications Commission's ("FCC's") changes to its network unbundling rules in its *Triennial Review Order ("TRO")*[1]. In accordance with the Telecommunications Act of 1996[2] ("the Act"), responses to Verizon's Petition are to be filed with the Commission by March 16, 2004. On March 11, 2004, Verizon requested that the Commission hold the Petition for Arbitration in abeyance until March 19, 2004.

Since Verizon's initial filing on February 20, 2004, the status of the *TRO* has been cast into a state of flux. On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued an Opinion[3] pertaining to the *Triennial Review Order*. In its Opinion, the Court vacated and/or remanded various portions of the *TRO*. As a result of the Court's action, the Commission believes that Verizon's Petition for Arbitration is premature, as the status of the law it seeks to use as a trigger for its change of law provision is unclear. Based upon this procedural uncertainty, the Commission hereby rejects Verizon's Petition, without prejudice.

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[1] *In the Matters of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advances Telecommunications Capability*, Report and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, and 98-147, FCC 03-36 (rel. Aug. 21, 2003). ("*TRO*").

[2] 47 U.S.C. 251 et seq.

[3] *United States Telecom Association v. FCC*, No. 00-1012, 2004 U.S. App. LEXIS 3960 (D.C. Cir. Mar. 2, 2004)

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Additionally, in light of the Commission's rejection of Verizon's Petition, it is unnecessary to grant the extension requested by Verizon on March 11, 2004.

By Direction of the Commission,

Felecia L. Greer
Executive Secretary

cc: Verizon Exhibit 1 - Service List

FLG:lvs

BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY OF
THE COMMONWEALTH OF MASSACHUSETTS

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	Docket No. 04-33

ATTACHMENT 2

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

PETITION OF

VERIZON VIRGINIA INC.

and

VERIZON SOUTH INC.

Petition for Arbitration

CASE NO. PUC-2004-00030

STAFF MOTION TO DISMISS

On March 10, 2004, Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon") filed a Petition for Arbitration ("Petition"), asking that the State Corporation Commission ("Commission") initiate a consolidated arbitration proceeding to amend the various interconnection agreements ("IAs") between Verizon and those Competitive Local Exchange Carriers ("CLECs") and Commercial Mobile Radio Service ("CMRS") providers who have such IAs.

The Commission's Staff ("Staff"), pursuant to 5 VAC 5-20-80 D and 5 VAC 5-20-110, moves the Commission to dismiss the Petition for the reasons set forth below.

Background

Verizon's proposed amendments to its IAs purportedly implement and reflect provisions of the Federal Communications Commission's ("FCC") Triennial Review Order ("TRO").[1] Verizon states that its Petition is filed "pursuant to the transition process the FCC established in that [the TRO] order." (Petition at p. 2). Verizon, in support of its Petition, cites portions of the TRO that reflect the FCC's concern that many provisions of the TRO would not be self-executing and would instead require changes to the IAs between carriers. (*See* TRO at ¶ 700).

The FCC, noting that the unbundling provisions of 47 U.S.C. § 251 are largely implemented through IAs, declined to override the § 252 process and "unilaterally change *all* interconnection agreements to avoid any delay associated with renegotiation of contract

[1] *Report and Order and Order of Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rec. 16978 (released August 21, 2003), vacated in part and remanded, *United States Telecom Ass'n v. FCC*, Nos. 00-1012 *et al.*, 2004 WL 374262 (D.C. Cir. March 2, 2004).

provisions." (TRO at ¶ 701, citation omitted, emphasis added). Instead, the FCC, noting that it believes that "*individual* carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our [the FCC's] rules into the commercial environment," (TRO at ¶ 700, emphasis added), instead offered carriers some "guidance," purportedly to "avoid undue delay or confusion." (TRO at ¶ 702).

The FCC, in an apparent attempt to have carriers quickly implement the unbundling provisions of the TRO, opined that the timetable established by § 252 of the Act should be used to encourage swift modification of IAs via negotiation. (See TRO ¶¶ 703, 704). Where negotiations fail, the FCC noted that arbitrations before state commissions would follow the timing provisions of § 252(b) governing arbitrations. (See TRO ¶ 730). According to this "process" improvised by the FCC, the Commission would have to issue a ruling on Verizon's Petition by July 2, 2004.[2] The FCC goes on to admonish state commissions to "be vigilant in monitoring compliance with the provisions of sections 251 and 252." (TRO at ¶ 703).

Argument

Strangely, the FCC fails to heed its own admonition to the states.

Actions taken pursuant to both § 252(a)(1) ("Voluntary Negotiations") and § 252(b)(1) ("Arbitration") are conditioned on requests for interconnection or negotiation made *to* ILECs.[3] Indeed, the FCC recognizes this condition precedent in its TRO, but flatly ignores the words of both sections: "Although section 252(a)(1) and section 252(b)(1) refer to requests that are made *to* incumbent LECs, we find that in the interconnection amendment context, either the incumbent or the competitive LEC may make such a request, consistent with the parties' duty to negotiate in good faith pursuant to section 251(c)(1)." (TRO at fn. 2087, emphasis in original).

---

[2] July 2, 2004, is nine months after the effective date of the TRO, October 2, 2003. According to § 252(b)(4)(c), state commissions must resolve arbitration petitions within nine months after an ILEC receives a request for interconnection or negotiation.

[3] Section 252(a)(1) ("Voluntary Negotiations") states that "[u]pon *receiving* a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers," while § 252 (b)(1) states that "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier *receives* a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." (emphasis added)

The Act establishes that the trigger for a negotiation or arbitration is the ILEC's *receipt* of request for interconnection or negotiation. In what appears to be a complete rejection of the Act's language, the FCC posits that "a party cannot contend that the negotiation time period did not begin because another party failed to send a request for negotiation because such actions do not constitute the trigger for negotiations. Instead, as indicated above, negotiations will be deemed to commence upon the effective date of this Order." (TRO at fn. 2088).

Simply, the Act conditions actions under §§ 251 and 252 upon an ILEC's receipt of a request for interconnection or negotiation from a CLEC. The FCC attempts to modify the provisions of the Act to deem the effective date of the TRO as the trigger for negotiations. Verizon, in its Petition, attempts to seize upon the FCC's ill-advised conclusions and involve this Commission in a consolidated proceeding to modify hundreds of Verizon's IAs. Unfortunately, such a proceeding would be built upon sinking sand. The Act requires that negotiation or arbitration occur after an ILEC has *received* a request, and the FCC's attempt to require something other than what the statute mandates must fail.

The requirement that negotiations and arbitrations necessarily follow an ILEC's receipt of request for interconnection or negotiation is statutory. Also statutory, and jurisdictional, are the timing provisions of § 252 that require a petition for arbitration to be filed between the 135th and 160th day after the date of request for negotiation, (§ 252(b)(1)), and that require a state commission to act within nine months of such request. (§ 252(b)(4)(C)). Such dates may not be extended or modified, even by consensus.

This is not to say that Verizon cannot implement provisions of the TRO through its IAs. Those Verizon IAs that have change-of-law provisions can presumably adapt to the FCC's new rules without renegotiation. In its other IAs, Verizon may be able to seek changes in its agreements on an individual basis with the CLECs. Additionally, changes may be implemented when current IAs expire and are replaced. Finally, any CLEC may presumably request re-negotiation of an existing IA, but no provision of the Act mandates any unilateral abandonment of terms and conditions already agreed upon.

In the alternative, even if the FCC has the ability to modify the terms of the Act to support its scheme, Verizon has failed to comply with § 252(b)(2), which requires a petitioning party to provide, concurrent with its petition, information concerning, 1) unresolved issues, 2) the position of each of the parties on those issues, and 3) any other issue discussed and resolved by the parties. Verizon's broad Petition fails to provide the information required by the statute. Defending this failure, Verizon notes that, "[b]ecause the CLECs have generally not responded to Verizon's draft amendment," Verizon cannot provide the required information. This serves to underscore the structure of the Act and the intent of Congress: the arbitration process is designed to jump-start ILEC/CLEC interconnection in those instances where negotiation and mediation have failed to produce an agreement. Arbitration under § 252 is not designed to unite an ILEC with all of the several CLECs in a mass, wholesale ceremony.

Additionally, Verizon attempts to use the provisions of § 252(g) ("Consolidation of State Proceedings") as a *replacement* for individual negotiations, rather than as the administratively efficient process it was intended to be. It is unclear if any real negotiations have occurred in this case, and thus Verizon's reliance on § 252(g) attempts to consolidate only parties, not issues. Again, the structure of § 252 serves to *narrow* the issues presented to state commissions, not to create an ill-defined proceeding.

Verizon also fails to comply with the provisions of 20 VAC 5-419-30 ("Agreements arrived at through compulsory arbitration"), which requires that a "petitioning party shall certify its compliance with the duty to negotiate in good faith provision of 47 USC § 251(c)(1)." Verizon made no such certification in its petition, as the rule requires. Failure to file supporting documentation is cause for denial of the relief sought in the Petition, pursuant to 20 VAC 5-419-10 G.

WHEREFORE, the Staff respectfully requests that the Commission dismiss Verizon's Petition.

Respectfully submitted,

The Staff of the
State Corporation Commission

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March 24, 2004

CERTIFICATE OF SERVICE
MASSACHUSETT D.T.E 04-33

I hereby certify that, on March 25, 2004, I caused copies of the foregoing letter and attachments to be served upon the parties on the attached service list by Electronic and /or first –class- mail, postage prepaid.

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